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### REMARKS

This is a response to the Office Action dated January 29, 2002. Pursuant to 37 CFR § 1.607, the applicant has presented two new claims 18 and 19. The applicant also provides argument to traverse the Examiner's § 102(b) rejection. For the double patenting rejection, the applicant submits a terminal disclaimer. The applicant respectfully requests an interference be declared against the Huang patent (U.S. 6,050,810).

#### A. NEW CLAIM 18 IS ALLOWABLE AND INTERFERING WITH HUANG:

In response to the 35 U.S.C. § 102(b) rejection, the applicant has submitted new claims 18 and 19. Claim 18, which is similar to, and not materially different from, original claim 16, merely clarifies the axis of movement of the trigger and fuel release valve.

##### 1. There is Antecedent Basis for "Movement of the Trigger Along a First Axis."

In claim 18 (lines 6-7), the antecedent basis for the limitation of the "trigger, slidably mounted in the lighter housing along a first axis," is found in originally filed claim 16 (line 6), Fig. 1 (Ref. 1 and 100) and in the Specification (page 12, line 13). The limitation for describing movement of the trigger "along a first axis" is not materially different from the original language of claim 16 because the trigger had to move along an axis to be operable in original claim 16. The

fact that the trigger moved along an axis was an inherent feature of original claim 16 because all triggers move along some axis to be operational. Hence, simply reciting that the trigger moves along a first axis is not a material change from the original claim. The same is true for the movement of the fuel release valve along an axis. Simply giving a name to the inherent feature of the fuel release valve (i.e., "second axis") does not create a material change in the claim.

2. Antecedent Basis for "Movement of the Fuel Release Valve Along a Second Axis."

In claim 18 (lines 10-12), the antecedent basis for the limitation of "said fuel release valve capable of movement along a second axis parallel to said first axis of said movement of said trigger," is found in Fig. 1 (Ref. 31) and in the Specification (page 13, lines 6-11). No new matter has been added to claim 18.

3. New Claim 18 Complies with 35 U.S.C. § 135(b) and 37 CFR 1.607(a)(6) Because Claim 18 Is Not Materially Different From Original Claim 16.

The applicant's new claim 18 complies with 35 U.S.C. § 135(b) and 37 CFR 1.607(a)(6) because the applicant's new claim 18 is not materially different from the originally submitted claim 16. 35 U.S.C. § 135(b)(1) states, [a] claim which is the

same as, or for the same or substantially the same subject matter as, a claim of an issued patent may not be made in any application unless such a claim is made prior to one year from the date on which the patent is granted." 37 CFR § 1.607(a)(6) requires that the applicant explain, "[h]ow the requirements of 35 U.S.C. § 135(b) are met, if the claim presented or identified under paragraph (a)(4) of this section was not present in the application until more than one year after the issue date of the patent." In explaining the application of § 135(b), the Federal Circuit has instructed, "[t]o establish entitlement to the earlier effective date of existing claims for purposes of the one-year bar of 35 U.S.C. 135(b), a party must show that the later filed claim does not differ from an earlier claim in any 'material limitation.'" In re Berger, 279 F.3d 975, 61 U.S.P.Q.2d 1523, 2002 WL 109513 (Fed. Cir. 2002). See also Corbett v. Chisholm, 568 F.2d 759, 765-66 (CCPA 1977).

Here, claim 16 was filed on Nov. 30, 2000 and within one (1) year of the issue date of the Huang patent (Apr. 18, 2000). Claim 18 is a duplicate of claim 16 with the exception of the limitations of movement along a first and a second axis. These limitations of movement along a first or second axis do not materially differ from the limitation of movement in original claim 16 because the description of "sliding movement" in the original claims necessarily requires movement in a particular

direction. Here, the movement along a particular axis simply clarifies an existing limitation. As a result of no material difference between claim 18 and claim 16, claim 18 complies with the requirements of both 35 U.S.C. § 135(b) and 37 CFR § 1.607(a)(6).

4. Claim 18 Is For Substantially The Same Subject Matter As Claims 1 And 6 Of Huang.

37 CFR § 1.601(i) states, "[a]n interference may be declared between one or more pending applications and one or more expired patents naming different inventors when, in the opinion of an examiner, any application and any unexpired patent contain claims for the same patentable invention."

Claim 18 is entitled to a declaration of interference with the interfering Huang patent (U.S. 6,050,810) because both the applicant's claim 18 and Huang's claims 1 and 6 are for the same patentable invention. In particular, both the applicant's claim 18 and Huang's claims 1 and 6 disclose movement of the valve and the trigger along a parallel axis as explained below:

a. Trigger

Focusing on the trigger, Claims 1 and 6 of the interfering Huang patent describes, "a trigger slidably received in said housing..." (Huang, claim 1, line 5; claim 6, line 5). In this respect, the Huang specification explains, that the Huang trigger (20) "is slidably disposed in front of the igniting

device 18 for triggering the igniting device 18." (Huang, Col. 2, lines 30-32). In addition, the Huang trigger slides along an axis parallel to the interfering Huang lighter housing 10 as shown in Fig. 2-4. This is significant because just as with the applicant's claimed invention, the Huang trigger slides parallel axes. Hence, the present invention as claimed and the Huang invention as claimed are interfering.

b. Valve

For the valve, the interfering Huang patent's claims 1 and 6 describe, "a plug slidably received in said housing..." (Huang, claim 1, line 7; claim 6, line 7). The Huang specification describes the movement of the valve or plug as "the front end of the plug 31 is secured in the tube 30 and moves in concert with the tube 40." (Huang, Col. 2, lines 48-50). This means that like the applicant's claimed invention, the Huang invention as claimed also has the plug sliding along in a particular direction and axis.

The Huang specification further explains, "when the knob 60 is further moved forward to move the sleeve 50 and the tube 40 and the plug 31 forward until the front end 52 of the sleeve 50 is engaged with the bearing 42, the rear end of the plug 31 is disengaged from the valve seat 38 such that the gas may flow..." (Huang, Col. 3, lines 20-26). This means that as Huang's plug

moves forward to release fuel, Huang's invention as claimed has its fuel release valve move along in a particular direction and along a particular axis, which is parallel to the direction of movement of Huang's trigger. Thus, both the language of the interfering Huang patent's claims and the applicant's claims describe the movement of the trigger and the fuel release valve along a parallel axis and are the same patentable invention.

5. Claim 18 Corresponds to the Count.

The applicant submits that the proposed count in the Preliminary Amendment, dated Nov. 17, 2000, corresponds to new claim 18. As argued in the applicant's Nov. 30, 2000 Preliminary Amendment, the applicant's claim 16 corresponds to the applicant's count. Since, the difference between the applicant's claim 18 and the originally filed claim 16 is for purposes of clarification rather than a material change, the applicant will show the amended claims still correspond to the count:

a. Describing The Trigger's Movement Along A First Axis.

Both Claim 18 and the count both describe the trigger as being slidably mounted in the lighter housing. Claim 18, lines 6-7 describes, "the trigger, slidably mounted in the lighter housing along a first axis." The count, lines 6-7 describes, "the trigger being slidably mounted in the lighter housing." The added limitation of "along a first axis" merely describes a

direction that is inherent in the operation of any structure slidably mounted. Thus, the count, which can be broadly interpreted, would include the trigger being slidably mounted along a first axis.

b. Describing the fuel release valve capable of movement along a second axis parallel to said first axis of said movement of said trigger.

Both Claim 18 and the count both describe the fuel release valve capable of movement along a second axis parallel to said first axis of said movement of said trigger. Claim 18 states, "said fuel release valve capable of movement along a second axis parallel to said first axis of said movement of said trigger." The count, lines 25-28, states, "said valve to move to an open position at the same time that said release lever moves said latch out of interference with said trigger." The movement of the valve in the count is nonspecific with respect to the axis of movement. Even though the count does not specify the path it takes, the valve still must move along some axis. Hence, it is an inherent feature of the count that the valve has an axis of movement. Hence, the new claims merely clarify the axis of movement of the valve while still falling within the scope of the count.

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B. NEW CLAIM 19 IS ALLOWABLE AND INTERFERING WITH HUANG:

1. Antecedent Basis For Rotational Movement Of The Spring Mechanism.

In response to the § 102(b) rejection, the applicant submits new claim 19, which is based on original claim 17 with a limitation regarding the rotational movement of the spring mechanism. For claim 19 (line 18), the antecedent basis for the limitation of "a safety button for rotationally moving said spring mechanism," can be found in Fig. 1 and in the specification at page 18 (lines 1-8, lines 17-19) and page 17 (lines 7-16). No new matter has been added to new claim 19.

2. New Claim 19 Complies With 35 U.S.C. § 135(b) And 37 CFR 1.607(a)(6) Because Claim 19 Is Not Materially Different From Original Claim 17.

The applicant's new claim 19 is not materially different from the originally submitted claim 17 because rotational movement is within the scope of movement of the spring mechanism of Claim 17. Claim 19's rotational movement of the spring mechanism is clearly within the range of limitations as described in original claim 17. Original claim 17 describes, "a safety button for moving said spring mechanism from said non-operational position to said operational position...." New claim 19 describes "a safety button for **rotationally** moving said spring mechanism from said non-operational position to said

operational position..." This claim 19 language is not materially different from original claim 17 because rotational motion is inherent in the movement of a spring. Rotational movement is inherent to the nature of a spring because springs inherently rotate in response to torsional forces. Torsion is defined by Webster's New Collegiate Dictionary as "the twisting or wrenching of a body by the exertion of forces tending to turn one end or part about a longitudinal axis while the other is held fast or turned in the oppose direction". This defines the exact motion of a spring. By it's very nature, it twists and rotates. Hence, the rotational movement of the spring mechanism in Claim 19 is inherent in the original claim 17, but still distinguishes over Tasi because Tasi has no such rotational movement.

3. Applicant's Claim 19 and Huang's Claim 1 Are Directed To The Same Patentable Invention.

Claim 19 is also entitled to a declaration of interference with the Huang patent (U.S. 6,050,810) because the applicant's claim 19 and Huang's claim 1 are directed toward the same patentable invention. In addition to the common claim elements of claims 17 and 19, the applicant's claim 19 describes rotational movement of the spring mechanism from the non-operational position to the operational position.

Similarly, Huang's claim 1 also describes similar rotational movement. Huang's claim 1 states, "a latch pivotally secured in said housing..." (Huang, Claim 1, lines 15-16). Pivotally secured requires rotational movement. As shown in the Huang drawings, Huang's latch 70 involves rotational movement. The Huang specification states, "the arm 72 of the latch 70 is rotated by the extension 64 of the knob 60 to disengage the hook 731 of the latch 70 from the trigger 20..." (Huang, Col. 3, lines 14-16). This "rotational motion" of the Huang latch 70 can be seen in Fig. 2-4 of the Huang '810 patent. As a result, both the applicant's claim 19 and Huang's claim 1 describes the same patentable invention, including rotational movement of the applicant's spring mechanism.

#### 4. Claim 19 Corresponds To The Count.

The applicant submits that the proposed count in the Preliminary Amendment, dated Nov. 17, 2000, corresponds to new claim 19. Claim 19 is exactly the same as original claim 17, with the exception of the limitation of "rotationally" moving said spring mechanism. Claim 19, lines 20-22, describes, "a safety button for rotationally moving said spring mechanism from said non-operational position to said operational position." Similarly, the count also covers this "rotational movement." The count, lines 14-16, describes, "a release lever having an external end outside of said housing for manipulation by the

user from a non-operational to an operational lighting position." The count, lines 22-26, also describes, "said release lever also capable of engaging said fuel release valve such that manipulation of said external end of said release lever causes said valve to move to an open position at the same time that said release lever moves said latch out of interference with said trigger."

The moving of the non-operational to an operational lighting position in the count is capable of including rotational movement of the spring mechanism. Because the count does not specify the path required to move from the non-operational to operational position, any path would fall within the scope of the count, including a rotational path. Hence, claim 19 falls within the scope of the count. Because claim 19 falls within the count, the applicant respectfully submits that claim 19 is in interference with the Huang claims 1 and 6.

C. RESPONSE TO 35 U.S.C. § 102(b) REJECTION:

The Examiner has rejected claims 16 and 17 under 35 U.S.C. § 102(b) as being anticipated by Tasi (U.S. 5,531,592). The Examiner has concluded that Tasi discloses, "a spring mechanism having a non-operational position, an operational position, a first portion (top end of 34), and a second portion (bottom end of 34)...." (1/29/02 Office Action, page 2).

1. Tasi Does Not Teach Every Element of Claims 16-17.

In response, the applicant respectfully traverses the Examiner's § 102(b) rejection based on Tasi because the Tasi reference fails to teach every aspect of the applicant's claimed invention. MPEP § 706.02(a) instructs, "for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present." MPEP §706.02(a) (page 700-20).

Specifically, Tasi does not teach a spring mechanism with a first portion and a second portion. Claims 16 (lines 11-16) and 18 (lines 13-18) state, "a spring mechanism having a non-operational position, an operational position, a first portion and a second portion, the first portion locks the trigger when the spring mechanism is in the non-operational position, the second portion opens the fuel-release valve when the spring mechanism is in the operational position..." Also, claims 17 (lines 11-17) and 19 (lines 11-16) state, "a spring mechanism having a non-operational position, an operational position, a first portion and a second portion, said first portion locks said trigger by interfering with said stopper tab when said mechanism is in the non-operational position..."

No where in Tasi does it describe such a spring mechanism with a first portion that locks the trigger when the spring

mechanism is in the non-operational position and the second portion opens the fuel-release valve when the spring mechanism is in the operational position. Any such structure that had such a spring mechanism with first and second portions would define over the Tasi reference. As a result of the lack of teaching of the first and second portions of the applicant's spring mechanism, the applicant respectfully traverses the §102(b) rejection based on Tasi of claims 16-17 because the two inventions are fundamentally different and serve fundamentally different purposes.

2. Tasi's Upright Pressure Rod Does Not  
Correlate to a Spring Mechanism.

In addition, Tasi does not teach every element of claims 16 and 17 because Tasi's upright pressure rod (34) does not correlate with the applicant's spring mechanism with a first and second portion. The term, upright pressure rod (34) does not teach or suggest a spring. Tasi does disclose a coil spring (35), which is mounted around the upright pressure rod (34). (Tasi, Col. 2, lines 23-25; Fig. 1 and 2). However, this coil spring (35) is a completely separate structure from the upright pressure rod (34). In contrast, the applicant's spring mechanism, as described in claims 16-19 and shown in Fig. 1, shows a first portion and a second portion of a single structure that is also flexible without a separate spring. Actually,

having fewer parts is advantageous because it will be more economical.

Tasi's pressure rod (34) is not a spring and has no inherent flexibility. This rod is inflexible in order to translate the motion of the slide switch (36) to move the rod out of way of the depressible firing button (22) and to contact the push button of the cigarette lighter to release fuel. (Tasi, Col. 2 and 3). Because of this distinct structure, Tasi's upright pressure rod (34) cannot be analogous to the applicant's first and second portions of the spring mechanism.

3. Tasi Does Not Teach Every Element of Claim 18.

Further, in response to the § 102(b) rejection, the applicant submits new claim 18. Claim 18 is patentable over Tasi because Tasi fails to teach every element of claim 18. The applicant's new claim 18 describes, "a trigger, slidably mounted in the lighter housing along a first axis," and a "fuel release valve capable of movement along a second axis parallel to said first axis of said movement of said trigger." (Claim 18, lines 6-7 and lines 10-12, emphasis added). Nowhere in Tasi does it teach or suggest the trigger and the fuel release valve moving along a parallel axis. Any structure that had such a trigger and a fuel release valve moving along a parallel axis would define over Tasi. As a result, the applicant would traverse a § 102(b) rejection based on Tasi for claim 18.

4. Tasi Discloses a Completely Different Structure for the Movements of the Trigger and Fuel Release Valve.

Tasi teaches a completely different structure for the trigger and fuel release valve than what is claimed in the applicant's invention. Unlike the applicant's movement of the trigger and the fuel release valve along parallel axis as described in claim 18 and covered in claims 16-17, Tasi's fuel release valve and the trigger (depressible firing button (22)) have movement along almost perpendicular paths.

Tasi's fuel release valve, which is activated by the slide switch 36, moves along the longitudinal axis of the lighter housing. The slide switch (36) moves the upright pressure rod 34 in a downward direction along the length of the lighter housing to open the fuel gas nozzle and to move out of the path of the depressible firing button (22). Tasi describes, "the slide switch (36) is moved down to the operative position, the push button of the cigarette lighter is depressed causing the fuel gas nozzle of the cigarette lighter opened..." (Tasi, Col. 2, line 66 to Col 3, line 10).

Quite differently, the Tasi invention has a trigger or firing button (22) that moves along an almost perpendicular axis. As shown in Fig. 2, Tasi's depressible firing button (22) or trigger has a path of movement that runs in a direction



almost perpendicular to the path of movement of the fuel gas nozzle. (Tasi, Fig. 2). As a result of Tasi's trigger and fuel release valve operating along non-parallel axes, Tasi does not teach the trigger and fuel release valve of claims 16-18.

5. Tasi Teaches Against of the Trigger and Fuel Release Valve Working Along Parallel Axes.

Tasi teaches against the trigger and fuel release valve working along parallel axes. One of Tasi's purposes is to employ and to accommodate a commercially available and disposable cigarette lighter as the fuel source for the gas torch. (Tasi, Col 1, lines 22-25). Because of this need to use such a disposable cigarette lighter, Tasi teaches fitting a cigarette lighter inside the housing in an upright position. (Tasi, Fig. 1 & 2). This upright position of the cigarette lighter also affects how the other components, including the piezo unit, are placed in the gas torch and in the mount.

In addition, Tasi also intends to have the firing device (2) and the fuel control device (3) placed within the mount (4) so that when the disposable cigarette lighter needs to be replaced and the mount (4) is removed from the holder (1), the depressible firing button (22) and the slide switch (36) will not be triggered. (Tasi, Col. 3, lines 26-30, and Fig. 2). Due to this requirement of preventing accidental ignition, the piezo unit must be placed within the small confines of the mount. The

mount requires the piezo unit to lie most efficiently within the mount or at an almost perpendicular axis to the holder and the cigarette lighter. Thus, when the user pushes down on Tasi's sliding switch (36) to open the fuel release valve along the length of the holder (1), the user will then depress the trigger (22) to activate the piezo unit along an almost perpendicular axis. As a result, Tasi does not teach the applicant's invention of having the trigger and the fuel release valve operating at parallel axes as described in claim 18.

6. Tasi Does Not Teach the Rotational Movement of Claim 19.

In response to the Examiner's § 102(b) rejection, the applicant also submits new claim 19. Claim 19 describes, "a safety button for rotationally moving said spring mechanism from said non-operational position to said operational position...." (Claim 19, lines 20-23). Nowhere in Tasi does it teach or suggest a safety button for rotationally moving a spring mechanism from a non-operational position to an operational position. Any structure that had such a safety button, which rotationally moved the spring mechanism, would define over Tasi. As a result, the applicant would traverse a § 102(b) rejection based on Tasi for claim 19.

Quite differently from the applicant's invention, Tasi has no rotational movement. As shown in Fig. 1 and 2 of Tasi, the user presses down on the sliding switch to release the trigger

and to open the fuel valve along a first axis parallel to the housing (1) and the cigarette lighter, then the user presses on the trigger (22) to activate the piezo unit along a second axis, almost perpendicular to the first axis. There is no rotational movement of the spring mechanism from a non-operational position to an operational position. Tasi's pressure rod (34) simply moves up and down the axis of the cigarette lighter.

7. The Applicant's Claimed Invention Is Ergonomically Different and Advantageous Over Tasi.

The invention as described in all of the applicant's claims 16-19 are novel and unique over Tasi because the applicant claims an invention that is structurally and significantly different on its face than what Tasi discloses. Both the applicant and Tasi present child-resistant utility lighters. However, there are significant differences in structure and components that lead to great ergonomic differences between the applicant and Tasi. The purpose of the Tasi invention is to retrofit an existing non-child resistant lighter to make it child-resistant. Whereas the purpose of the Applicant's invention is to design a lighter itself that is child-resistant without the need for retrofitting.

To attempt to retrofit a non-child-resistant lighter to be child-resistant, Tasi places an adapter on a non-child-resistant lighter. However, this retrofit makes Tasi's lighter inherently

less ergonomically efficient as compared to the applicant's child-resistant utility lighter. As shown in Fig. 3 of Tasi, the user would have to grip the holder (1) with his or her hand such that a finger, such as the index finger, could push down the slide switch (36) and simultaneously push the depressible firing button (22) or trigger with his or her thumb. By having to reach around the lighter holder (1) with a finger and at the same time to operate the trigger, Tasi's lighter is more difficult to use and to operate than the applicant's claimed lighter invention (claims 16-19).

In contrast, the applicant's claimed invention (claims 16-19) presents a lighter that is easy to use and ergonomically efficient. As shown in applicant's Fig. 1, the user simply depresses the safety button, which moves the fuel release lever forward along a first axis and also allows the trigger to be pushed along a second axis to activate the piezo unit to generate a spark. This can be easily accomplished with one hand and with the thumb on the safety button and the index and/or third fingers on the trigger. The applicant's claimed invention fits easily in the user's hand and does not require any contortions or awkward movements to operate.

Also, this action of moving the fuel release lever and the trigger along parallel axes is very different from Tasi's invention, which has the trigger and fuel release lever acting

at substantially perpendicular axes. For these basic ergonomic reasons, which are in addition to the arguments concerning the specific claim language that distinguishes over Tasi presented above, the applicant respectfully traverses the §102(b) rejection because the two inventions are fundamentally different, serve fundamentally different purposes, and achieve substantially different ergonomic results.

D. RESPONSE TO DOUBLE PATENTING REJECTION:

The Examiner rejected claims 16 and 17 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 6 of U.S. Patent No. 6,186,773. In response, please find enclosed a terminal disclaimer for the instant application with U.S. Patent No. 6,186,773.

Please note that the instant application is a continuing application of U.S. Serial No. 09/751,628, now issued as U.S. Patent No. 6,186,773 on February 13, 2001. Please note that both applications have been assigned to Calico Brands, Inc.

E. CONCLUSION:

In light of the above arguments, the applicant respectfully requests reconsideration of claims 16 and 17 and consideration of new claims 18 and 19.

The applicant believes the pending claims represent allowable subject matter if the Applicant prevails in the interference. Specifically, Applicant believes that original

claim 16 and 17 are allowable over Tasi and interfering with Huang, that the new claims 18 and 19 are substantially the same as the original claims and are allowable over Tasi and interfering with Huang, and respectfully requests that an interference be declared between this instant application and U.S. Patent No. 6,050,810 (Huang).

If any additional fees are required for this amendment and response, the Director is authorized to deduct the required amounts from our deposit account no. 500703.

Respectfully Submitted,

TROJAN LAW OFFICES

Dated: April 29, 2002

By

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